IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

SA.No. 449 of 1993(C) & CROSS OBJECTION

AS.14/1991 of SUB COURT, SULTHAN BATHERY
OS.394/1982 of MUNSIFF COURT, KALPETTA

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APPELLANT/APPELLANT/PLAINTIFF:

HARRISONS MALAYALAM LIMITED
A COMPANY INCORPORATED UNDER THE
INDIAN COMPANIES ACT HAVING ITS
REGISTERED OFFICE AT WILLINGTON ISLAND
KOCHI -682003, REP, BY ITS MANAGER -LEGAL AND
POWER OF ATTORNEY-HOLDER SHRI V. VENUGOPAL.

BY ADV. SRI.A.M.SHAFFIQUE
SRI ANTONY DOMINIC, A M SHAFFIQUE

RESPONDENT/RESPONDENT/DEFENDANT:-

PANKARA MOIDEEN, AGED ABOUT 35 YEARS,
SON OF HYDRU, RESIDING AT MEPPADI
KOTTAPPADI VILLAGE, VYTHIRI TALUK
WYNAD DISTRICT.

BY ADV. SRI A A ABUL HASSAN, V M KURIAN(JR.)

THIS SECOND APPEAL AND CROSS OBJECTION HAVING BEEN FINALLY HEARD ON 27/3/2007 THE COURT ON 27/03/2007 DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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S.A.No. 449 OF 1993 & Cross Objection

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DATED THIS THE 27th DAY OF MARCH, 2007

JUDGMENT

Plaintiff in O.S.394 of 1982 on the file of Munsiff Court, Kalpetta is the appellant. Defendant therein is the respondent. Appellant filed the suit seeking a decree for recovery of possession of plaint B schedule property on the strength of title. Case of the appellant was that plaint A schedule property was taken assignment by the appellant company as per Ext.A1 assignment deed dated 25.10.1923 and plaint B schedule property forms part of plaint A schedule property and on 8.5.1979, respondent trespassed into the plaint B schedule property and reduced the same into his unlawful possession and he succeeded in getting a purchase certificate from Land Tribunal and that order was set aside by the Appellate Authority (Land Reforms) in an appeal filed by appellant and appellant is therefore entitled to recover possession of plaint B schedule property on the strength of title with mesne profits @ Rs.100/- per annum. Respondent in the written statement contended that appellant has no subsisting title to plaint B schedule property. It was contended that an extent of 2.35 acres in R.S.188/3A1 was

entrusted on an oral lease to the respondent by appellant company in 1960 and he has been in possession of the property since then and he is entitled to fixity of tenure and though he obtained purchase certificate from the Land Tribunal, the order was set aside and SM proceedings was remanded and appellant is not entitled to the decree sought for. It was also contended that even if appellant has title to the plaint B schedule property, it is barred by adverse possession and limitation. The question of tenancy claimed by the respondent was referred to the Land Tribunal under Section 125(3) of Kerala Land Reforms Act. Land Tribunal, Kalpetta tried the referred case along with the SM proceedings which was remanded by the Appellate Authority (Land Reforms). Before the Land Tribunal, AW1 and RW1 and Exts.A1 to A10, C1 to C4 and X1 were marked. Land Tribunal, on the evidence, upheld the claim of tenancy in respect of plot C measuring 70 cents marked by the Commissioner in Ext.C2 plan. On receipt of the findings from the Land Tribunal, Section Officer of the appellant company was examined as PW1 and Exts.A1 to A4 and C1 to C3 were marked. On the side of the respondent, he was examined as DW1 and Exts.B1 and B11 were marked.

2. Learned Munsiff, on the evidence, upheld the finding of the Land Tribunal and held that respondent is a cultivating tenant having fixity of tenure in respect of plot C marked in Ext.C2 plan. Learned Munsiff further found that plot A marked in Ext.C1 plan is part of vested forest as admitted by PW1 and therefore appellant is not entitled to a decree for recovery of possession of plot A. But learned Munsiff found that appellant has title to plot B and respondent has no right over the same and therefore granted a decree for recovery of possession of plot B. Appellant challenged the decree and judgment before Sub Court, Sultan Bathery in A.S.14 of 1991. Respondent filed a cross-objection challenging the decree granted in respect of plot B marked in Ext.C2 plan. Learned Sub Judge, on re-appreciation of evidence, confirmed the decree and judgment passed by learned Munsiff and dismissed the appeal and cross objection. The Second appeal is filed challenging the concurrent decree and judgment disallowing the claim for recovery of possession on the strength of title in respect of plot A and C marked in Ext.C2 plan. Respondent filed a cross-objection challenging the dismissal of the cross-objections.

3. The Second Appeal was admitted formulating the

following substantial questions of law.

i) Whether courts below were right in finding that the plaintiff does not have title over Plot A of B schedule property merely on a statement made by the Advocate Commissioner that the said area was Vested Forest?

ii)Whether courts below were right in considering the question as to whether a portion of B schedule was vested forest and that plaintiff has no right over the same?

iii)Whether courts below were right in upholding the finding of land Tribunal, when there was absolutely no evidence before the Land Tribunal to prove that the defendant was in possession of the property prior to 1.4.1964?

4. Learned counsel appearing for appellant and respondent were heard.

5. The title of the appellant to the property covered under Ext.A1 was not disputed. The case of appellant was that plot A, B and C marked by the Commissioner in Ext.C2 plan, is the plaint B schedule property which is part of plaint A schedule property. According to appellant plaint A schedule property is the property covered under Ext.A1. The learned Munsiff and learned Sub Judge, on the evidence upheld the claim of

appellant over plot B. But the claim for recovery of possession of plot A was disallowed holding that report of the Commissioner and Ext.C3 plan prepared by Surveyor and the evidence establish that plot A is part of vested forest. Claim for recovery of possession over plot C was disallowed, upholding the plea of tenancy raised by the respondent after confirming the finding of the Land Tribunal.

6. Learned counsel appearing for the appellant vehemently argued that there is no evidence to prove that plot A marked in Ext.C2 plan is part of vested forest. It was also aruged that courts below should not have relied on the report submitted by the Commissioner to enter a finding that plot A is part of vested forest. But from the records, it is clear that courts below did not rely on the report of the Commissioner or the plan prepared by the Surveyor alone to enter a finding that plot A forms part of vested forest. On the other hand, evidence of PW1 is sufficient to establish that plot A forms part of vested forest. The report of the Commissioner and the evidence of PW1 and DW1 establish that the residential house of respondent is in plot A. Ext.B1 is a communication sent by the appellant at the time when respondent started construction of the building. In Ext.B1,

it has been specifically stated by the appellant that respondent has started construction of a building in the reserved forest. PW1 admitted at the time of cross-examination that Forest Tribunal found that part of the property belonging to the appellant company was declared as vested forest. PW1 also deposed that the matter is now pending before Supreme Court in an appeal filed by the appellant company. PW1 also admitted that the property which lies just to the north of plot B and shown in yellow shaded portion which is plot A is part of the vested forest and it was taken possession by the State pursuant to the order of Forest Tribunal and now pending before the Supreme Court. Therefore evidence establish that plot A is part of the vested forest as found by Forest Tribunal. So long as that order was not set aside in the appeal filed by the appellant before the Supreme Court, appellant is not entitled to claim any right or title to that property. Hence the finding of courts below that appellant has no subsisting title to plot A and being a vested forest appellant is not entitled to a decree for recovery of possession of plot A is perfectly correct. It is made clear that if the appellant succeeds in the matter pending before the Supreme Court and it is found that it is not part of vested forest,

appellant is entitled to seek appropriate remedy available under law.

7. The argument of learned counsel appearing for appellant was that there is no evidence to prove that respondent has been in possession of the property in plot C before 1.4.1964 and the evidence only show that he has been in possession after 1.1.1970 and therefore the finding of the Land Tribunal as upheld by the first appellate court is unsustainable. The case of the appellant could have been appreciated if appellant had a case that respondent was permitted to cultivate the property but permission was granted only after 1.4.1964 and therefore respondent is not entitled to fixity of tenure. But that was not the case pleaded or sought to be proved. What was contended by the appellant was that respondent is a rank trespasser, who trespassed into plaint B schedule property on 8.5.1979. On the otherhand case of respondent was that he was in possession of the property from 1960 onwards as per an oral lease granted by appellant company. Therefore if the evidence establish that case of trespass of 1979 alleged by appellant is not true, then the only other alternative case available is the one pleaded by the respondent is that he has been in possession of the property

from 1960 onwards and that too as per oral lease granted by the appellant company. The Land Tribunal as well as first appellate court appreciated the evidence and found that Ext.B2 dated 12.11.1973 establish that appellant had granted permission to the respondent to cultivate the paddy field. The relevant portion of Ext.B2 reads as follows:-

> "It has been reported to me by the Conductor, Kardoora Division that you have trespassed into the Company's Land adjoining the paddy plot(swamp)alloted to you for cultivation and that you have planted the trespassed area with tapioca".

8. As rightly found by the courts below, Ext.B2 establish that respondent has been cultivating the paddy field before 1973 and that was as permitted by the appellant company. If that be so, case of appellant that respondent trespassed into plaint B schedule property in 1979 as alleged in the plaint cannot be true. Land Tribunal and first appellate court in the light of the evidence accepted the case of the respondent that he

has been in possession of plot C marked in Ext.C2 plan as per an oral lease from 1960 onwards. I find no reason to differ with that finding as it is a possible and reasonable finding that could be taken on the evidence on record. In such circumstances, there is no merit in the appeal. It is dismissed. Though a cross-objection was filed, no substantial question of law arises in the cross-objection. The cross-objection is also dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

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